# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1886.

## No. 419.

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ROLAND WORTHINGTON, COLLECTOR OF CUSTOMS, PLAINTIFF IN ERROR,

vs.

JERE ABBOTT AND AUSTIN A. WHEELOCK, COPARTNERS AS JERE ABBOTT & CO.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Massachusetts, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Jere Abbott and Austin A. Wheelock, both of Boston, copartners under the style of Jere Abbott & Co., doing business at said Boston, in said district, plaintiffs, and Roland Worthington, collector of the customs for the revenue district of Boston and Charlestown, defendant, in an action of contract, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twentieth day of September, in the year of our Lord one thousand eight hundred and eighty-four.

JOHN G. STETSON,
*Clerk of the Circuit Court of the United States,*
*District of Massachusetts.*

Allowed by—

LE BARON B. COLT,
*Circuit Judge.*

2 CIRCUIT COURT OF THE UNITED STATES,
*District of Massachusetts, ss:*

And now here the judges of the circuit court of the United States in and for the district of Massachusetts make return of this writ by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, John G. Stetson, clerk of said circuit court of the United States in and for the district of Massachusetts, have hereto set my hand and the seal of said court this first day of October, A. D. 1884.

[SEAL.] JOHN G. STETSON,
*Clerk.*

3 UNITED STATES OF AMERICA,
*Massachusetts District, ss:*

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Tuesday, the fifteenth day of May, in the year of our Lord one thousand eight hun-

dred and eighty-four, before the honorable Horace Gray, associate justice, and the honorable Thomas L. Nelson, district judge. Jere Abbott and Austin A. Wheelock, both of Boston, copartners under the style of Jere Abbott & Co., doing business at said Boston in said district, plaint-
4 iffs, v. Roland Worthington, collector of the customs for the revenue district of Boston and Charlestown, defendant. In an action of contract.

1ST COUNT.

And the pl'ffs say the def't owes them fifty-six and $\frac{11}{100}$ dollars according to the account hereto annexed.

ACCOUNT ANNEXED.

BOSTON, *Oct.* 1, '83.

*R. Worthington, collector, to Messrs. Jere Abbott & Co. Dr.*

May 25, '83. To excess of duty paid 22,444 lbs. of Swedish iron nail-rods imported per str. Marengo and entered for consumption May 25, '83..... $56 11

SECOND COUNT.

And also for that on the day of the purchase of this writ the said
5 defendant, being indebted to the plaintiffs in the sum of fifty-six & $\frac{11}{100}$ dollars, demanded, exacted, and received of the plaintiffs by the defendant, then and now collector of the customs for the revenue district of Boston and Charlestown, under color of a law of the United States for the collection of duties on imports, and by the plaintiffs paid under protest, and before that time had and received by the defendant to the plaintiffs' use, in consideration thereof promised to pay the plaintiffs when he should be thereto afterwards requested; yet said defendant has not paid the same or any part thereof, though thereto often requested.

To the damage of the said plaintiffs, as they say, the sum of one thousand dollars.

The writ in this cause is dated the first day of October, A. D. 1883, and was duly entered at the October term of this court A. D. 1883,
6 when and where the parties appeared by their respective attorneys.

On the tenth day of November the following answer was filed:

*Defendant's answer.*

And now comes the defendant in the above-entitled action and for answer denies each and every allegation in the plaintiffs' writ and declaration contained.

On the thirty-first day of January, A. D. 1884, the following agreement was filed:

*Agreement waiving jury trial.*

It is hereby agreed to waive a jury in the above cause, and that the same may be tried and determined by the court without the intervention

of a jury, as provided in sections 649 and 700 of the Revised Statutes of the United States.

CHAS. LEVI WOODBURY,
*Att'y for Pl'ffs.*
GEORGE P. SANGER,
*U. S. Att'y & Att'y for Def't.*

7 This cause thereupon came on to be heard by the court and was fully heard, the Honorable Le Baron B. Colt, district judge of the United States for the district of Rhode Island, duly assigned by the Honorable John Lowell, circuit judge, to hold said court, sitting and holding the court.

This cause was then continued under advisement to this present term, when, on the seventh day of June, the opinion of the court is filed.

On the twentieth day of September, the defendant having theretofore presented his bill of exceptions to the court, the same is filed and allowed, and is in the words following:

*Defendant's exceptions.*

This was an action of contract against the defendant as collector of the port of Boston to recover duties alleged to have been illegally as-
8 sessed by him on certain merchandise imported by the plaintiffs into the port of Boston.

Trial by jury was waived by agreement of the parties in writing duly filed, and the case was heard by the court.

It appeared in evidence at the trial that the defendant liquidated the duties on the merchandise in question under section 2504 of the Revised Statutes, schedule E, as "bar-iron rolled or hammered, comprising flats less than three-eighths of an inch or more than two inches thick, or less than one inch or more than six inches wide, at one and one-half cents a pound."

The plaintiffs contended that the duties should have been liquidated under the clause in the said schedule, "all other descriptions of rolled or hammered iron not otherwise provided for, one cent and one-fourth per pound." The plaintiffs paid the duties as liquidated under protest,
9 took due appeal to the Secretary of the Treasury, and seasonably brought this action to recover the excess claimed to have been illegally exacted. It further appeared in evidence at the trial that the merchandise in controversy was rolled iron in straight flat pieces about twelve feet long, three-eighths of an inch wide and three-sixteenths of an inch thick, slightly curved on their edges, and that they were made for the special purpose of making nails. It further appeared in evidence that prior to and in 1874, and subsequently, such iron was known in commerce as nail-rods, and had not been bought or sold as bar-iron, and that in a commercial sense nail-rods are not known as bar-iron [that in similitude the iron in question most resembles scroll-iron in its shapes and sizes], but it
10 was not known commercially as scroll-iron.

The defendant thereupon requested the court to rule that in the provision of the statutes under which the duties were liquidated bar-iron, comprising certain sizes and descriptions, was used in the sense of "iron in

bars," comprising those sizes and descriptions and was not used in a commercial or technical sense; that as the iron imported came directly within the statute description of "bar iron, rolled or hammered, comprising flats less than three-eighths of an inch or more than two inches thick, or less than one inch or more than six inches wide," the duties were properly assessed and liquidated, and that on the evidence in the case the plaintiffs were not entitled to recover.

11 But the court declined so to rule and ruled that nail-rods having acquired a specific commercial designation among traders and importers, and having been designated by a specific name in previous legislation would not properly come under the general term bar-iron in the Revised Statutes, but should be classified as a description of rolled or hammered iron not otherwise provided for and so subject to a duty of one and one-fourth cents a pound. To which rulings and refusals to rule the defendant then and there duly excepted and prays that his exceptions may be allowed.

The foregoing exceptions presented by the defendant are allowed.

LE BARON B. COLT,
*U. S. Judge.*

It is thereupon considered by the court Sept. 20, 1884, the Honorable Le Baron B. Colt, circuit judge sitting, that the said Jere Abbott

12 and Austin A. Wheelock, plaintiffs, recover against the said Roland Worthington, defendant, the sum of damages and their costs of suit, taxed at .

A true record.

Attest:

JOHN G. STETSON,
*Clerk.*

13 The following is the opinion of the court upon which judgment was rendered Sept. 20, 1884:

Circuit court of the United States, district of Massachusetts.

JERE ABBOTT ET AL.
*v.*
ROLAND WORTHINGTON, COLLECTOR. } No. 2156, law docket.

*Opinion of the court.*

[June 7, 1884.]

COLT, J. The collector assessed duty at the rate of one and one-half cents per pound on an importation of Swedish iron nail-rods, under Schedule E, § 2504, Rev. Stat., as bar-iron rolled or hammered.

The plaintiffs claim that the article is only liable to a duty of one and one-fourth cents per pound, either as a description of rolled and hammered iron not otherwise provided for, or as coming under the similitude clause of § 2499, Rev. Stat., as resembling scroll-iron. The case was heard by the court, jury trial being waived.

The evidence shows that the importation is known commercially as nail-

rods, and that, in a commercial sense, nail-rods are not bar-iron. The article is made and used for a special purpose, and known in commerce by a distinct name.

It further appears that in the act of 1842 and in some previous acts, nail-rods are specifically designated as such, so that Congress in the tariff laws has recognized nail-rods as distinct from bar-iron or iron in bars.

Nail-rods having acquired a specific commercial designation among traders and importers, and having been designated by a specific name in previous tariff legislation would not properly come under the general term bar-iron in the Rev. Stat., but should be classified as a description of rolled and hammered iron not otherwise provided for, and so subject to a duty of one and one-fourth cents a pound.

We think this case clearly within the rules laid down in Arthur v. Morrison, 96 U. S., 108, and Arthur v. Lahey, 96 U. S., 112, and that judgment should be entered for the plaintiffs.

14 UNITED STATES OF AMERICA,
*Massachusetts District, ss:*

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the record and of all proceedings in the cause of Jere Abbott et al. v. Roland Worthington, in said circuit court determined.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this first day of October, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and ninth.

[SEAL.] JOHN G. STETSON,
*Clerk.*

15 (Indorsement on cover:) No. 419. Roland Worthington, collector of customs, plaintiff in error, vs. Jere Abbott and Austin A. Wheelock, copartners as Jere Abbott & Co. Massachusetts C. C. U. S. Filed 18th October, 1884.

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FILED.
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JAMES H. McKENNEY.
CLERK.

# In the Supreme Court of the United States.

OCTOBER TERM, 1887.

ROLAND WORTHINGTON, COLLECTOR OF customs, plaintiff in error,
*vs.*
JERRE ABBOTT AND AUSTIN A. WHEELOCK, copartners as Jerre Abbott & Co.
} No. 135.

*IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.*

## BRIEF FOR THE PLAINTIFF IN ERROR.

# In the Supreme Court of the United States.

OCTOBER TERM, 1887.

ROLAND WORTHINGTON, COLLECTOR OF customs, plaintiff in error,
*vs.*
JERRE ABBOTT AND AUSTIN A. WHEELOCK, copartners as Jerre Abbott & Co.
} No. 135.

*IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.*

## BRIEF FOR THE PLAINTIFF IN ERROR.

### STATEMENT OF CASE.

The plaintiffs brought suit against the defendant as collector, to recover duties alleged to have been unlawfully collected by him from them on an importation of 22,444 pounds of Swedish iron. The proceedings were all regular. The only question in the case arises from the fact that the collector liquidated the duty under Section 2504, R. S., Schedule E, as "bar-iron," "rolled or

hammered, comprising flats less than three-eighths of an inch or more than two inches thick, or less than one inch or more than six inches wide, one cent and one half per pound." (Rev. Stat., page 464.) The plaintiffs claimed the duty should have been liquidated under the clause in the same schedule, "all other descriptions of rolled or hammered iron not otherwise provided for, one cent and one-fourth per pound." (Rev. Stat., 465). The iron in dispute "was rolled iron in straight flat pieces about twelve feet long, three-eighths of an inch wide, and three sixteenths of an inch thick, slightly curved on their edges, and that they were made for the special purpose of making nails." (R., p. 3). It also appeared in evidence "that prior to and in 1874, and subsequently, such iron was known in commerce as nail-rods, and had not been bought or sold as bar-iron, and that in a commercial sense nail-rods are not known as bar-iron (that in similitude the iron in question most resembles scroll-iron in its shapes and sizes), but it was not known commercially as scroll-iron."

The court adopted the view of the plaintiffs, and ruled the iron should have been classified under the clause last quoted, and entered judgment for the plaintiff.

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## SPECIFICATIONS OF ERROR.

*First.* The court erred in refusing to rule as requested by the defendant "that in the provision of the statutes under which the duties were liquidated bar-iron, comprising certain sizes and descriptions, was used in the sense of 'iron in bars,' comprising those sizes and descriptions, and was not used in a commercial or technical sense; that as the

iron imported came directly within the statute description of 'bar-iron, rolled or hammered, comprising flats less than three-eighths of an inch or more than 2 inches thick, or less than 1 inch or more than 6 inches wide,' the duties were properly assessed and liquidated, and that on the evidence in the case the plaintiffs were not entitled to recover."

*Second.* The court erred in ruling that nail-rods having acquired a specific commercial designation among traders and importers, and having been designated by a specific name in previous legislation, would not properly come under the general term bar-iron in the Revised Statutes, but should be classified as a description of rolled or hammered iron not otherwise provided for, and so subject to a duty of 1¼ cents a pound.

*Third.* The court erred under the facts stated in the bill of exceptions in entering judgment against the defendant and in favor of the plaintiff. The exception is as follows:

> This was an action of contract against the defendant, as collector of the port of Boston, to recover duties alleged to have been illegally assessed by him on certain merchandise imported by the plaintiffs into the port of Boston.
>
> Trial by jury was waived by agreement of the parties in writing duly filed, and the case was heard by the court.
>
> It appeared in evidence at the trial that the defendant liquidated the duties on the merchandise in question under section 2504 of the Revised Statutes, Schedule E, as "bar-iron, rolled or hammered, comprising flats less than three-eighths of an inch or more than two inches thick, or less than one inch or more than six inches wide, at one and one-half cents a pound."

The plaintiffs contended that the duties should have been liquidated under the clause in the said schedule, "All other descriptions of rolled or hammered iron not otherwise provided for, one cent and one-fourth per pound." The plaintiffs paid the duties as liquidated under protest, took due appeal to the Secretary of the Treasury, and seasonably brought this action to recover the excess claimed to have been illegally exacted. It further appeared in evidence at the trial that the merchandise in controversy was rolled iron in straight, flat pieces about 12 feet long, three-eighths of an inch wide, and three-sixteenths of an inch thick, slightly curved on their edges, and that they were made for the special purpose of making nails. It further appeared in evidence that prior to and in 1874, and subsequently, such iron was known in commerce as nail-rods, and had not been bought or sold as bar-iron, and that in a commercial sense nail-rods are not known as bar-iron (that in similitude the iron in question most resembles scroll-iron in its shapes and sizes), but it was not known commercially as scroll-iron.

The defendant thereupon requested the court to rule that in the provision of the statutes under which the duties were liquidated bar-iron, comprising certain sizes and descriptions, was used in the sense of "iron in bars," comprising those sizes and descriptions, and was not used in a commercial or technical sense; that as the iron imported came directly within the statute description of "bar-iron, rolled or hammered, comprising flats less than three-eighths of an inch or more than two inches thick, or less than one inch or more than six inches wide," the duties were properly assessed and liquidated, and that on the evidence in the case the plaintiffs were not entitled to recover.

But the court declined so to rule and ruled that

nail-rods, having acquired a specific commercial designation among traders and importers, and having been designated by a specific name in previous legislation, would not properly come under the general term bar-iron in the Revised Statutes, but should be classified as a description of rolled or hammered iron not otherwise provided for, and so subject to a duty of 1¼ cents a pound. To which rulings and refusals to rule the defendant then and there duly excepted, and prays that his exceptions may be allowed.

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**BRIEF OF ARGUMENT.**

The decision in this case under the facts depends upon the solution of the question as to whether nail-rods should be classified under the first or second of the following clauses of section 2504, R. S., Schedule E, pp. 464 and 465:

First. "Bar-iron, rolled or hammered, comprising flats less than three-eighths of an inch or more than two inches thick, or less than one inch or more than six inches wide; one cent and one half per pound."

Second. "All other descriptions of rolled or hammered iron not otherwise provided for; one cent and one-fourth per pound."

The plaintiffs claimed and the court ruled it should be classified under the latter. The defendant claims the liquidation under the former was correct. The reason assigned by the court for the classification adopted is—

> Nail-rods having acquired a specific commercial designation among traders and importers, and having been designated by a specific name in previous tariff legislation, would not properly come under the

general term bar-iron in the Revised Statutes, but should be classified as a description of rolled and hammered iron not otherwise provided for, and so subject to a duty of one and one-fourth cents a pound.

We think this case clearly within the rules laid down in *Arthur* vs. *Morrison* (96 U. S., 108), and *Arthur* vs. *Lahey* (96 U. S., 112), and that judgment should be entered for the plaintiffs.

The latest date at which nail-rods were described by that specific designation in legislation is in the act of 1842, 5 U. S. Stats., 551, and is as follows: "Iron, in nail or spike rods or nail plates." Since that time there have been repeated tariff revisions. The importation of nail-rods has largely increased since 1842. It is not because it is too unimportant to justify a designation by name that the specific name has been dropped out of legislation, nor is it because the relative value of the article as compared with other articles has changed that would warrant the conclusion that it was intended by the Legislature to place upon it the lower duty fixed by the general clause under which the court classified it. The reason it does not occur under its specific name doubtless is that in and after the passage of the act of 1846 generic names were largely adopted instead of an attempted specification. In the use of these generic names, as in this case, in some instances to avoid the result that, as in the designation by class, as the class was composed of many species, the enactment might become a dead letter by proving a specific designation for each item therein, what should be comprised in the generic name was defined in the statute. The principle reiterated in the cases of *Arthur* vs. *Morrison*, and *Arthur* vs. *Lahey*, cited by the court, is not ap-

plicable to this case in the sense in which the court applied it. The principle in these cases is, "when Congress had designated an article by a specific name and by such name imposed a duty upon it, general terms in a subsequent act or a later part of the same act, although sufficiently broad to comprehend said article, are not applicable to it." (*Arthur* vs. *Lahey*, 96 U. S., 113.) The court in this case applied the principle as though nail-rods had been used in section 2504, Revised Statutes, in designating the article under consideration. Whereas the specific designation of nail-rods is not found in the statutes. The interpretation of the principle by the court would insert the word "not" in the principle quoted, so that it would read "where Congress has not designated." The principle is applicable to where Congress has designated, and is not applicable to where Congress has not designated by a specific name. The application of the principle in this case was therefore erroneous.

The real question in this case is, when an article is precisely described without specific name, whether it shall be classified as described, or classified under the general clause "all other descriptions of rolled or hammered iron not otherwise provided for." The ruling of the court, if sustained, will establish the new and dangerous principle, that every article which has a commercial name must be specifically designated by that name in the several acts, or fall within the general provisions of not being provided for; that Congress shall be required to legislate by commercial name alone, or all articles not so designated shall in the interpretation of the laws be treated as not provided for. It is submitted such an interpretation is not warranted. Congress has the right to express its

intent in any intelligible form, without being subject to having that intent thwarted by such a limitation of its power by any other department of the Government. The clause under which the duty was liquidated clearly, by unmistakable description, includes nail-rods in this importation. The term "bar-iron" is generic. It includes many different species, adapted to different uses, and known by specific names. The number of the species and specific names is constantly increasing. As each different use that may be made of bar-iron of different breadths, thicknesses, or characters of material becomes large, a manufactory for that particular kind of bar-iron is erected, which makes the product adapted to that specific use a specialty and designates it by a specific name, such as nail-rods, iron-bar for railroads, red short, cold-short, or medium, as the name may be descriptive of the shape of the product or consistency of the metal, or both, which are the special characteristics of the products. The names thus adopted soon pass into commerce and become the specific designation. To avoid the result of this constant multiplication of species, in this enactment Congress described the articles by the generic term "bar-iron", and gave the rule by which it should be interpreted, by saying this product "bar-iron" shall comprise within its signification flats less than three-eighths of an inch or more than 2 inches thick, or less than 1 inch or more than 6 inches wide. This description provides for the nail-rods involved in this case, and the court erred in ruling it was not "provided for."

G. A. JENKS,
*Solicitor-General.*

O

# Supreme Court of the United States.

**OCTOBER TERM, 1887.**

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**No. 135.**

ROLAND WORTHINGTON, COLLECTOR, ETC.

*v.*

JERE: ABBOTT ET ALS.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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## BRIEF FOR DEFENDANTS IN ERROR.

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The issue in this case is as to the rate of duty lawfully chargeable upon iron nail rods imported.

By agreement of parties in writing (pp. 2 and 3 of the record), trial by jury was waived, and the case was tried to the Court upon law and facts.

The defendant below, as collector of customs, exacted a duty of one and one half cents per pound upon the import, under that clause in Schedule E, Section 2504 of the Revised Statutes, which provides for "bar-iron rolled or hammered, comprising flats less than three eighths of an inch or more than two inches thick, or less than one inch or more than six inches wide." While the plaintiffs below contended that these iron nail rods should have been assessed with a duty of one and one fourth cents per pound, under that clause in said schedule and section which provides such rate upon "all other descriptions of rolled or hammered iron not otherwise provided for." (See Exceptions, p. 3 of the record.)

Judge Colt below (pp. 4 and 5) found as a fact that the import was known commercially as nail rods, and that, in a commercial sense, nail rods are not bar iron; that it was made and used for a special purpose, and known in commerce by a distinct name, and that in the act of 1842, and in some previous acts, Congress had recognized nail rods as distinct from bar iron, or iron in bars, and that as a matter of law nail rods having acquired a specific commercial designation among traders and importers, and having been designated by a specific name in tariff legislation, would not properly come under the general term "bar iron," but should be classed as "a description of rolled or hammered iron, not otherwise provided for," and directed judgment for the plaintiffs.

The plaintiff, in error, contends, as he did in the court below, that as the import was in dimensions within those provided for in the bar-iron clause, it was rightly classed by him in that clause.

Judge Colt was of the contrary opinion, because the import was, in trade and commerce, known as nail rods, and was not known as bar iron, and because Congress had recognized the commercial distinction between the two descriptions of iron, by providing for nail rods, *eo nomine*, in the act of 1842, and other prior acts.

The case of Arthur *v.* Morrison, 96 U. S. 108, and Arthur *v.* Lahey, same volume, 112, are in point, particularly the first. The issue was as to the dutiable classification of "crape veils." The law provided for silk veils, and also provided for manufactures of silk, not otherwise provided for. As facts, it appeared that crape veils were made of silk, also that they were known as crape veils in trade, and were not known as silk veils. The Circuit Court and this Court held that crape veils should be classed as manufactures of silk, not otherwise provided for.

In the case at bar, the import is within the statute dimensions of bar iron, but, commercially, it is not bar iron. It is something else,— nail rods, — therefore, as in the crape-veil case, taxable under the general clause, for not otherwise provided for descriptions of iron.

Numerous authorities are cited in the crape-veil case; but the principle, "that Congress must be understood as describing the articles upon which the duty is imposed according to the commercial understanding of the terms used," is too long and too well settled by this Court to warrant further authority.

The counsel for the plaintiff in error misapprehended the principle in the crape-veil case when he argues that it is "when Congress has designated an article by a specific name, and by such name imposed a duty upon it; general terms in a subsequent act, or a later part of the same act, although sufficiently broad to comprehend said article, are not applicable to it."

The facts don't show that crape veils were specifically named in any act; yet this Court held that they were taxable as not otherwise provided for manufactures of silk, because commercially they were not known as silk veils, which were by name provided for.

So, here, Judge Colt held that nail rods were taxable as not otherwise provided for descriptions of iron, because they were not commercially known as bar iron, which was by name provided for.

The two cases in principle of construction applied are identical.

Counsel further argues that the "term bar iron is generic; that it includes many different species, adapted to different uses and known by specific names."

Iron, of itself, is unquestionably a generic name or descrip-

tion; but the word "bar," prefixed and applied to it, is most emphatically commercial. There is nothing generic about it; like numerous other commercially descriptive names or words used in the tariff laws for more than fifty years, such as slabs, blooms, loops, plates, band, hoop, slit rods, nail rods, etc., each and all in the trade having a well-understood meaning and application to iron. Bar iron or iron in bars are commercial descriptive terms applied to particular iron, the same as "slit rods," "nail rods," etc., refer to other commercial objects.

The act of 1828, 4th Statute at Large, p. 270, provides for iron in bars and bolts. On p. 271 it provides for iron in nail or spike rods. The act of 1842, 3d Statute at Large, p. 551, provides for bar and bolt iron, also for "iron nail or spike rods."

The decision of the Court below was in harmony with the decision of this Court in the Bohea Tea case in 1824, in the 9th of Wheaton, and many others down to the present day. It was in accordance with a most thoroughly established principle of construction of tariff laws. There is no error, and the judgment should be affirmed.

Respectfully submitted,

CHAS. LEVI WOODBURY,
*of Counsel for Defendants in Error.*